

# Notice of Allowability

Application No.

10/018,073

Examiner

Chih-Min Kam

Applicant(s)

FAUVEAU ET AL.

Art Unit

1656

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 4/15/05.
2. ☒ The allowed claim(s) is/are 1-11, 13, 14 and 19-21.
3. ☐ The drawings filed on NONE are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_

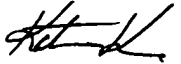
Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

  
KATHLEEN KERR, PH.D.  
PRIMARY EXAMINER

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**DETAILED ACTION**

***Status of the Claims***

1. Claims 1-11, 13-15, 19 and 20 are pending.

Applicants' amendment filed April 15, 2005 is acknowledged. Applicant's response has been fully considered. Claims 1 and 15 have been amended. Therefore, claims 1-11, 13-15, 19 and 20 are examined.

**Objection Withdrawn**

2. The previous objection to the specification is withdrawn in view of applicants' amendment to the specification, and applicant's response at page 11 in the amendment filed April 15, 2005.
3. The previous objection to claims 15, 19 and 20 is withdrawn in view of applicants' amendment to the claims, and applicant's response at page 11 in the amendment filed April 15, 2005.

**Rejection Withdrawn**

***Claim Rejections - 35 USC § 112***

4. The previous rejection of claims 1-7, 11 and 13-14 under 35 U.S.C. 112, second paragraph, is withdrawn in view of applicant's amendment to the claim, and applicant's response at pages 11-12 in the amendment filed April 15, 2005.

***Claim Rejections - 35 USC § 102***

5. The previous rejection of claims 1-11 and 13 under 35 U.S.C. 102(a) as being anticipated by Courtin *et al.* (WO/99/29716) is withdrawn in view of applicant's submission of an English

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translation of the priority document, and applicant's response at page 12 in the amendment filed April 15, 2005.

**Examiner's Amendment**

An **Examiner's Amendment** to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Charles A. Muserlian on June 28, 2005.

**Examiner's Amendments to the specification:**

Please replace the paragraph after the title at page 1 (see preliminary amendment filed December 4, 2001) with the following paragraph:

--- This application is a 371 of PCT/FR00/01568, filed June 8, 2000, which claims the priority of French Application No. FRANCE 99/07251, filed June 9, 1999. ---

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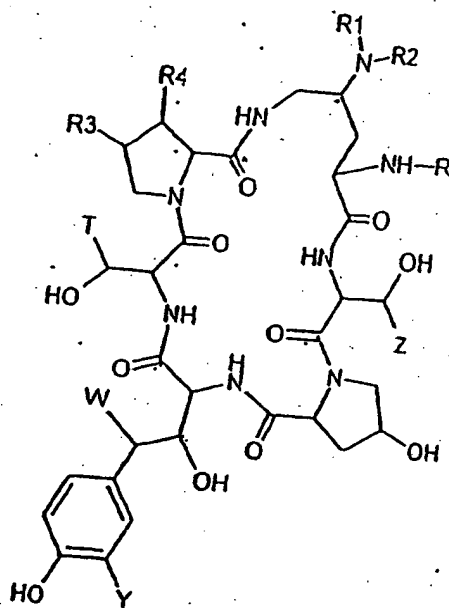
**Examiner's Amendments to the Claims:**

Cancel claim 15.

Add new claim 21.

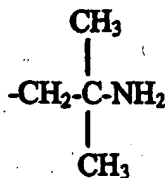
Claims 1, 19 and 20 have been amended as follows:

Claim 1 (Currently amended): A compound selected from the group consisting of all possible stereoisomers of a compound of the formula



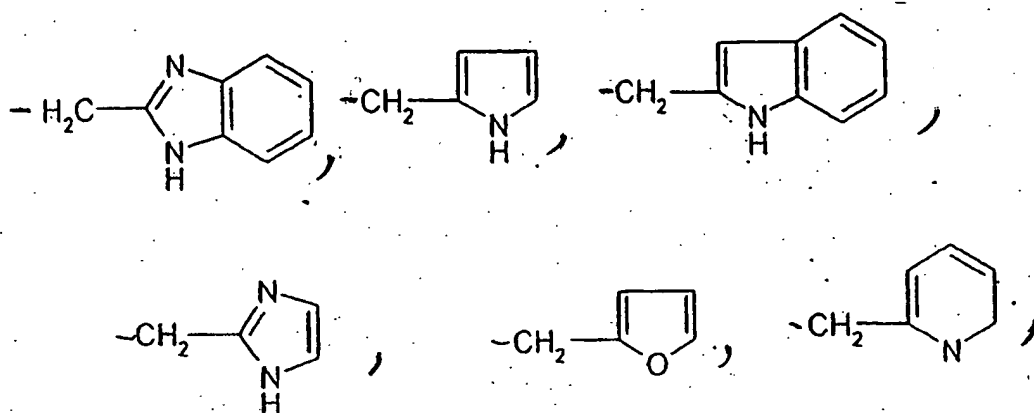
wherein  $R_1$  is hydrogen or methyl,  $R_2$  is selected from the group consisting of

$-\text{CH}_2-\text{CH}_2\text{NHCH}_3$ ,



$-\text{CH}_2\text{CH}(\text{CH}_3)\text{NH}_2$ ,

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$\text{-CH(CH}_3\text{)CH}_2\text{NH}_2$ ,  $\text{-(CH}_2\text{)}_a\text{OH}$  where  $a$  is an integer of 1 to 8,  $\text{-(CH}_2\text{)}_b\text{-C}\equiv\text{N}$  where  $b$  is

an integer of 1 to 8,  $\text{-CH(CH}_3\text{)C}_6\text{H}_5$ ,  $\text{-(CH}_2\text{)-C(CH}_3\text{)}_2\text{NHCOCF}_3$ , and

$\text{-CH(CH}_3\text{)(CH}_2\text{)}_d\text{OH}$  where  $d$  is an integer of 1 to 8,

$R_3$  is selected from the group consisting of hydrogen, methyl and hydroxyl,

$R_4$  is hydrogen or hydroxyl,

$R$  is selected from the group consisting of a) alkyl and cycloalkyl of up to 30 carbon

atoms optionally containing at least one heteroatom or at least one heterocycle, and b)

acyl or cyclic acyl of up to 30 carbon atoms optionally containing at least one heteroatom

or at least one heterocycle,

$T$  is selected from the group consisting of hydrogen, methyl,  $\text{-CH}_2\text{CONH}_2$ ,

$\text{-CH}_2\text{-C}\equiv\text{N}$ , and  $\text{-(CH}_2\text{)}_2\text{NH}_2$ ,

$Y$  is selected from the group consisting of hydrogen, hydroxyl, halogen and  $\text{-OSO}_3\text{H}$  or a

salt thereof,

$W$  is hydrogen or  $\text{OH}$ ,

$Z$  is hydrogen or methyl; and

a non-toxic, pharmaceutically acceptable acid addition salt thereof.

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Claim 19 (Currently amended): An antifungal composition comprising an antifungally effective amount of a compound of claim 21 and an inert pharmaceutical carrier.

Claim 20 (Currently amended): A method of treating fungal infections in warm-blooded animals comprising administering to warm-blooded animals in need thereof an antifungally effective amount of a compound of claim 21.

Claim 21 (new): The compound of claim 1 is 1-[4-[[[(1H-benzimidazol-2-yl)-methyl]-amino]-N2-[[4'-(pentyloxy) [1,1':4', 1" terphenyl]-4-yl]-cabonyl]-L-ornithine]-4-[4-(4-hydroxyphenyl)-L-threonine]-5-L-serine-echinocandin B trifluoroacetate (isomer B).

The following is an **Examiner's Statement of Reasons for Allowance**: The following reference appears to be the closest art to the claimed invention. Courtin *et al.* (WO 99/29716, published date June 17, 1999; English Equivalent: U. S. Patent 6,677,429) teach a compound of formula I consisting of all possible isomeric forms, where R<sub>1</sub> and R<sub>2</sub> are individually selected from the group consisting of hydrogen, OH, alkyl of up to 8 carbon atoms optionally interrupted with oxygen and optionally substituted with halogen, OH and N(-a) (-b), where a and b are individually hydrogen or alkyl of up to 8 carbon atoms, and when R<sub>2</sub> is a specific amine- or hydroxy-containing alkyl group. Since an English translation of the priority document (FRANCE 99/07251) for the instant application has been submitted, the instant application has a earlier priority date (June 9, 1999) than the priority date of Courtin *et al.* Furthermore, a terminal disclaimer against U. S. Patent 6,677,429 has been filed. Therefore, the claims are allowable over the art of record.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chih-Min Kam whose telephone number is (571) 272-0948. The examiner can normally be reached on 8.00-4.30, Mon-Fri.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathleen Kerr can be reached at 571-272-0931. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chih-Min Kam, Ph. D. *CMK*  
Patent Examiner

CMK

June 28, 2005

*K. H. L.*  
KATHLEEN KERR, PH.D.  
~~PRIMARY EXAMINER~~  
*SPE*